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Before the
Federal Communications Commission
 Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)

)
 Revision of the Commission's Rules to Ensure)
 Compatibility with Enhanced 911 Emergency)
 Calling Systems)

CC Docket No. 94-102

)
 King County, Washington Request Concerning)
 E911 Phase I Issues)
)

To: Chief, Wireless Telecommunications Bureau

4

PETITION FOR RECONSIDERATION**VERIZON WIRELESS**

John T. Scott, III
 Vice President and Deputy General
 Counsel — Regulatory Law
 1300 I Street, N.W. Suite 400W
 Washington, DC 20005
 (202) 589-3760

VOICESTREAM WIRELESS CORPORATION

Brian T. O'Connor
 Robert A. Calaff
 VoiceStream Wireless Corporation
 401 9th Stream, NW, Suite 550
 Washington, DC 20554
 (202) 654-5900

QWEST WIRELESS, LLC

Sharon J. Devine
 Kathryn Marie Krause
 1020 19th Street, NW Suite 700
 Washington, DC 20036-6101
 (303) 672-2859

NEXTEL COMMUNICATIONS, INC.

Robert S. Foosaner
 Lawrence R. Krevor
 Laura L. Holloway
 2001 Edmund Halley Drive
 Reston, VA 20191
 (703) 433-4000

June 6, 2001

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SUMMARY

The Bureau must reconsider its conclusion that wireless carriers are responsible for certain costs of the E911 Wireline Network and hold instead, based on the record in this proceeding and Commission rules and precedent, that the appropriate demarcation point for determining a "PSAP's costs" under Section 20.18(j) is the wireless carrier's MSC.

The Administrative Procedure Act requires the Bureau to consider and respond to significant comments in the record, which the Bureau did not do. The Bureau also erred with respect to its conclusion that the E911 Wireline Network — provisioned by the LEC for the PSAP — does not include trunks between the MSC and 911 selective router. The record in this proceeding and the Bureau's prior understanding of this fact is contrary to the Bureau's factual description of the E911 Wireline Network. Based on the underlying facts and record, and existing Commission rules and precedents, the Bureau must reconsider its decision and hold instead that the demarcation point is the wireless carrier's MSC.

The Bureau must base its decision on established Commission rules and precedents, and cannot effectively amend the rules through an interpretation that does not conform to the purpose and wording of the rule, or to the Commission's intent at the time the rules were promulgated. The Bureau's decision, and the stated reasons for that decision, are the type of policy considerations requiring a notice and comment rulemaking proceeding by the full Commission. Wireless carriers' ability to recover costs from customers is not relevant to the issue raised by King County, and the Bureau's determination in this regard is without support in the record and the rules. The only Commission precedent the Bureau cites in support of its interpretation does not support and, indeed, contravenes the Bureau's decision. The Bureau failed to address the relevant rule at issue — Section 20.18(j) — and its interpretation of the rules would render Section 20.18(j) superfluous. Finally, the Bureau's decision unlawfully discriminates against wireless carriers.

The Bureau's decision is inconsistent with the Commission's rules and underlying orders and is beyond the Bureau's delegated authority. Commission rules and precedent instead require the Bureau to affirm that the MSC is the appropriate demarcation point.

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To: Chief, Wireless Telecommunications Bureau

PETITION FOR RECONSIDERATION

Pursuant to Section 1.429 of the Commission's rules, 47 C.F.R. § 1.429, Verizon Wireless, VoiceStream Wireless Corporation, and Nextel Communications, Inc., and Qwest ("Petitioners") hereby petition the Wireless Telecommunications Bureau ("Bureau") to reconsider the conclusions reached in its May 7, 2001 letter to Marlys Davis, E911 Program Manager of the King County E-911 Program Office ("King County"), regarding "the question of cost allocations for Phase I implementation in King County."¹

At a minimum, the Bureau is obliged to reconsider its conclusions because it did not consider and address highly relevant facts and arguments submitted by commenters in response to the Bureau's solicitation of public input on the King County request. Moreover, when the Bureau does consider the full record, it must reconsider its determination that wireless carriers

¹ Letter from Thomas J. Sugrue, Chief, Wireless Telecommunications Bureau, Federal Communications Commission, to Marlys R. Davis, E911 Program Manager, King County E-911 Program Office, Dept. of Information and Administrative Services, dated May 7, 2001 ("Bureau Letter").

are required “to bear all Phase I costs up to the input of the 911 Selective Router” (Letter at 3) and hold instead that the mobile switching center (“MSC”) is the appropriate “demarcation point” for determining carriers’ and PSAPs’ respective obligations, given its obligation to reach a decision in accordance with Commission rules, precedents and guidelines.

BACKGROUND

Section 20.18(d) of the Commission’s rules requires cellular, broadband PCS and certain SMR licensees to “provide the telephone number of the originator of a 911 call and the location of the cell site or base station receiving a 911 call from any mobile handset accessing their systems to the designated Public Safety Answering Point through the use of ANI and Pseudo-ANI.”² This requirement applies “only if the administrator of the designated Public Safety Answering Point has requested the services required under those paragraphs and is capable of receiving and utilizing the data elements associated with the service, and a mechanism for recovering the Public Safety Answering Point’s costs of the enhanced 911 service is in place.”³

In a letter dated May 25, 2000, King County argued that these rules require that carriers “provide the additional network and data base components necessary to deliver Phase I service, and the interface of these network and data base components to the existing E911 system, at no cost to the counties.”⁴ In subsequent correspondence with Commission staff, King County

² 47 C.F.R. § 20.18(d).

³ *Id.* § 20.18(j).

⁴ Letter from Marlys R. Davis, E911 Program Manager, King County E-911 Program Office, Department of Information and Administrative Services to Thomas J. Sugrue, Chief, Wireless Telecommunications Bureau, Federal Communications Commission, dated May 25, 2000 (“King County Letter”).

elaborated further its position that these rules require carriers to pay for facilities and services on the “carrier’s side” of the selective router and the ALI database.⁵

The Bureau sought public comment on the King County Letter by Public Notice, seeking comment on a number of issues.⁶ Numerous parties, including carriers and public safety organizations, filed comments, reply comments and *ex parte* presentations in the proceeding to address the issues raised in the Public Notice and the King County Letter. In the Bureau Letter, the language of Section 20.18(d)(1) was interpreted to require carriers to “deliver [Phase I] information to the equipment that analyzes and distributes it — *i.e.*, to the input to the 911 Selective Router.”⁷ The Bureau then interpreted the rule to hold carriers financially responsible for various E911 Wireline Network components in Non-Call Path Associated Signaling (“NCAS”), Call Path Associated Signaling (“CAS”), and Hybrid CAS (“HCAS”) environments, generally finding carriers responsible for purchasing trunks between the MSC and the selective router, trunks directly to the ALI database, and any third party database facilities (as applicable). The Bureau also found that the rule holds PSAPs, in turn, generally responsible for upgrades to the selective router, trunking from the selective router to the PSAP, and PSAP CPE. For the reasons discussed below, the Bureau’s decision was beyond the scope of its delegated authority, is not supported in the Commission’s rules and the record and constitutes rulemaking for which the full Commission must provide notice and comment.

⁵ Correspondence from Marlys Davis to Blaise Scinto, Deputy Chief, Policy Division, dated June 21, 2000.

⁶ Public Notice, *Wireless Telecommunications Bureau Seeks Comment on Phase I E911 Implementation Issues*, CC Docket No. 94-102, DA 00-1875, at 2 (Wireless Telecom. Bur. rel. Aug. 16, 2000) (“Public Notice”).

⁷ Bureau Letter at 4.

DISCUSSION

I. THE BUREAU'S FAILURE TO CONSIDER AND ADDRESS SIGNIFICANT COMMENTS REQUIRES RECONSIDERATION AND REVERSAL OF ITS DECISION

The Bureau must strictly comply with the Administrative Procedure Act, which imposes on the agency “the duty to respond to significant comments.”⁸ A significant comment is one that “raises points relevant to the agency’s decision and which, if adopted, would require a change in an agency’s proposed rule.”⁹ Many industry arguments, if adopted, would have resulted in a demarcation point at the MSC, requiring that the King County request be either dismissed or denied. Thus, elementary principles of reasoned decisionmaking required the Bureau to consider and address significant facts and arguments made by members of the public responding to its solicitation of comments.¹⁰ Having solicited public input, the Bureau had to consider the comments and other filings that were submitted, but there is no indication in the Letter that the Bureau did so.¹¹ Indeed, it appears from the Letter that the Bureau chose to ignore altogether the many filings opposed to the King County request.

The commenters raised a number of critical legal issues, all of which were ignored. In particular, the Bureau ignored arguments that:

⁸ See *Chrysler Corp. v. Brown*, 441 U.S. 281, 312 (1979); *Alabama Power v. Costle*, 636 F.2d 323, 384 (D.C. Cir. 1979).

⁹ See *HBO v. FCC*, 567 F.2d 9, 36 (D.C. Cir. 1977), *COMSAT v. FCC*, 836 F.2d 623, 634 (D.C. Cir. 1988).

¹⁰ See, e.g., *See Grand Canyon Air Tour Coalition v. FAA*, 154 F.3d 455, 468 (D.C. Cir. 1998) (“[a]n agency must . . . demonstrate the rationality of its decisionmaking process by responding to those comments that are relevant and significant.”); *Professional Pilots Federation v. FAA*, 118 F.3d 758, 763 (D.C. Cir. 1997); *Simpson v. Young*, 854 F.2d 1429, 1434 (D.C. Cir. 1988); *ACLU v. FCC*, 823 F.2d 1554, 1581 (D.C. Cir. 1987).

¹¹ The Bureau cites only one filing by a member of the public, Sprint PCS’s description of the various technological platforms for provision of wireless E911, see Letter at 4 n.12, and even in doing so does not mention any of Sprint PCS’s arguments.

- Wireless carriers' responsibility under § 20.18(d) is satisfied by making Phase I data available at the MSC, and a PSAP's decision to transport and process that data in a particular manner is the PSAP's financial responsibility, not that of the wireless carrier.¹²
- A PSAP is not capable of receiving and utilizing Phase I E911 information if it cannot accept and utilize the twenty digits of information that a wireless carrier must provide pursuant to § 20.18(d), and any deficiencies in the PSAP's E911 network that require upgrades to accommodate the information required by the rule are the PSAP's responsibility.¹³
- King County's request is inconsistent with Commission rulings that PSAPs are responsible for "additional network services."¹⁴
- King County's request constitutes an untimely reconsideration petition and represents an impermissible collateral attack on final Commission decisions.¹⁵
- The Bureau does not possess delegated authority to grant the requested relief.¹⁶
- King County's position was contrary to long-standing cost-causer principles and available precedent and the Commission does not have the statutory authority to grant the requested relief.¹⁷
- King County's position is incompatible with historic practice.¹⁸
- King County's position is incompatible with the PSAP desire to control the 911 network that they alone use.¹⁹
- King County's position unreasonably discriminates among carriers.²⁰

¹² See Comments of Verizon Wireless at 5-7; Comments of VoiceStream Wireless at 9; Comments of Sprint PCS at 5-7.

¹³ See Comments of Sprint PCS at 7.

¹⁴ See Comments of VoiceStream Wireless Corporation at 8-9; Qwest Wireless Comments at 8-9.

¹⁵ See VoiceStream *Ex Parte* Presentation of February 6, 2001 at 2-3.

¹⁶ See Qwest Wireless Comments at 6.

¹⁷ See Comments of Verizon Wireless at 2-4; Comments of VoiceStream Wireless at 6-8, 10-11; Comments of Sprint PCS at 7, 14-15; *ex parte* letter of VoiceStream Wireless, dated February 6, 2001, at 4-6, 8-9.

¹⁸ See Verizon Wireless Comments at 3-5; VoiceStream Comments at 6-11; Qwest Wireless comments at 10-14.

¹⁹ See Verizon Wireless Comments at 2;

- King County’s position constitutes poor public policy.²¹ And,
- King County’s position is incompatible with state law.²²

Not one of these issues was addressed in the Letter.

The Bureau not only failed to address significant legal arguments, but also erred with respect to a key fact. The Bureau’s decision was premised on the assumption that the “E911 Wireline Network” — *i.e.*, the facilities provisioned by the LEC for the PSAP — includes only “the 911 Selective Router; the trunk line between the 911 Selective Router and the PSAP; the ALI database; and the trunk line between the ALI database and the PSAP,” and *not* the trunks connecting the wireline end office or MSC to the selective router.²³ This assumption, however, is incorrect. As many commenters pointed out, the E911 Wireline Network, which is LEC-provisioned for the PSAP’s benefit and for which the PSAP bears the costs, also includes trunks from the MSC and/or LEC end office to the 911 selective router.²⁴ The Bureau erred when it failed to acknowledge and address this fact.

Moreover, the Bureau’s error is compounded by the fact that it departed without explanation from its own prior understanding of this fact. The Bureau’s public notice stated, “we consider the E911 network to include all facilities and equipment beyond the wireless carrier’s switch necessary to transmit wireless 911 calls to PSAPs.”²⁵ The comments confirmed that this understanding was correct, yet the Bureau ignored it completely, assuming without any

²⁰ See Sprint PCS Comments at 12-14.

²¹ See VoiceStream *Ex Parte* Presentation of February 6, 2001 at 7.

²² See Comments of Sprint PCS at 9-11.

²³ Letter at 4.

²⁴ See, *e.g.*, Verizon Wireless Comments at 3-4; CTIA Comments at 5; Qwest Wireless Comments at 11-12; Sprint PCS Comments at 8-9; VoiceStream Comments at 8.

²⁵ Public Notice, *Wireless Telecommunications Bureau Seeks Comment on Phase I E911 Implementation Issues*, DA 00-1875, at 2 n.3 (Aug. 16, 2000).

explanation that the contrary was true, thus determining instead that wireless carriers are responsible for what are components of the E911 Wireline Network.

The record in this proceeding belies the Bureau's description of the E911 Wireline Network.²⁶ As numerous parties explained in their comments — PSAPs and carriers alike — the E911 Wireline Network includes trunks between the wireless switch and the selective router, just as it includes trunks between the wireline end office and the selective router.²⁷ These facilities are provisioned solely for the purpose of enhancing the existing E911 Wireline Network, and are configured in accordance with the PSAPs' needs. The Bureau did not acknowledge these arguments, notwithstanding that its determination as to MSC-selective router trunking facilities is, in reality, the crux of its allocation of various responsibilities between carriers and PSAPs. Once the Bureau takes into account the fact that the wireline-provisioned E911 Wireline Network paid for by the PSAP includes trunks between the selective router and the wireline local exchange carrier's switches, it must conclude that the demarcation point is at the MSC switch — the comparable point for a wireless carrier — and not the 911 selective router.

The Bureau is thus obliged to reconsider the decision reached in the Letter because it ignored a key fact and reached a decision premised on incorrect factual assumptions. If the Bureau corrects the factual basis for its decision²⁸ and acts consistent with established Commission rules, precedents, and guidelines, as it is required to do under its delegation of authority from the Commission,²⁹ it must reverse its decision and hold that the demarcation point

²⁶ See Letter at 3-4.

²⁷ See *supra* note 18; King County Comments at 1, 3; see also Joint Comments of NENA, APCO and NASNA, at 14 ("PSAPs have been customers of wireline telephone companies").

²⁸ See *Trans-Allied Audit Co. v. ICC*, 33 F.3d 1024, 1030 (D.C. Cir. 1994) (agency's findings of facts must be "supported by substantial evidence in the record as a whole").

²⁹ See 47 C.F.R. §§ 0.331(a), 0.131(a).

between the PSAP and wireless carriers is located at the wireless switch, not the 911 selective router. Otherwise, the Bureau has engaged in rulemaking, which only the Commission may conduct, and then only pursuant to notice and comment procedures.

II. THE BUREAU'S DECISION IS UNSUPPORTED IN COMMISSION RULES AND PRECEDENT AND CAN BE EFFECTED ONLY VIA THE FULL COMMISSION IN A NOTICE AND COMMENT RULEMAKING

The Bureau is obliged to reach a decision consistent with established Commission rules, policies, and guidelines. It cannot eliminate the meaning of the Commission's rules and supply new content through "interpretations."³⁰ To pass APA muster, any interpretation of the Commission's regulations by the Bureau must be reasonable, and must sensibly conform to the purpose and wording of the regulations;³¹ it must have a basis in the plain language of the rules or by other indications of the Commission's intent at the time the agency promulgated the rules, including some basis in the underlying Commission orders.³² The Bureau has not met this standard.

Instead, the Bureau based its decision on a new policy choice of who should bear the costs of the E911 Wireline Network, disrupting the Commission's previous determination and understanding in the *Second MO&O* of how the total costs of E911 are to be jointly shared by

³⁰ See *Caruso v. Blockbuster-Sony Music Entertainment*, 174 F.3d 166, 174-75 (3d Cir. 1999) (agency cannot adopt vague requirements "and then give it concrete form only through subsequent less formal 'interpretations'") (quoting *Paralyzed Veterans of America v. D.C. Arena L.P.*, 117 F.3d 579, 584 (D.C. Cir. 1997)).

³¹ See *Martin v. Occupational Safety and Health Rev. Comm'n*, 499 U.S. 144, 150-51 (1991) (citing *Lyng v. Payne*, 476 U.S. 926, 939 (1986), *Udall v. Tallman*, 380 U.S. 1, 16-17 (1965), and *Northern Ind. Pub. Ser. Co. v. Porter County Chapt. of Izaak Walton League of America, Inc.*, 423 U.S. 12, 15 (1975)).

³² See *Trinity Broadcasting of Florida, Inc. v. FCC*, 211 F.3d 618, 624-25 (D.C. Cir. 2000) (citing *Thomas Jefferson Univ. v. Shalala*, 512 U.S. 504, 512 (1994)); *Cassell v. FCC*, 154 F.3d 478, 484 (D.C. Cir. 1998), ("FCC's interpretation follows logically from the language of the Report and Order.").

PSAPs and carriers. The Bureau's determination that "*it does not seem inappropriate* to make the carriers responsible for those expenditures," and its reasons for this determination,³³ are the type of policy decisions and weighing of equities for which the full Commission must conduct a rulemaking proceeding and provide a reasoned explanation.³⁴ At absolute minimum, the Bureau must explain why it believes its interpretation has record support, or why its departure from precedent is warranted under the rules.³⁵

The Bureau's reasoning that wireless carriers "have the option of covering these phase I costs through their charges to customers, either through their prices for service or through surcharges on customer bills" is irrelevant for purposes of the Commission's rules and is without support in the record. Again, the Bureau apparently agreed with public safety organizations' arguments in this regard, but does not cite a basis in the Commission's rules or precedents for this conclusion. The Bureau justifies its decision in terms of customer welfare, *i.e.*, "whether the wireless carrier or the PSAP initially bears a particular set of Phase I costs, wireless customers will, in all likelihood, eventually bear the bulk of the overall costs of implementing Phase I, since in most jurisdictions, the PSAPs' costs of implementing wireless E911 are recovered through a tax or surcharge imposed on wireless subscribers." The manner in which a carrier may lawfully

³³ See Letter at 5-6 (emphasis added).

³⁴ See *Southeastern Michigan Gas Co. v. FERC*, 133 F.3d 34, 43-44 (D.C. Cir. 1998) ("the Commission may not . . . rely solely on its equitable discretion to justify straying from well-established rules and procedures. It must articulate valid reasons for its departure", citing *FERC v. Trito Oil & Gas Corp.*, 750 F.2d 113, 116 (D.C. Cir. 1984)).

³⁵ See *Bush-Quayle '92 Primary Committee, Inc. v. FEC*, 104 F.3d 448, 453-454 (D.C. Cir. 1997) (in context of agency interpreting own rules and precedents, the agency "must supply a reasoned analysis indicating that prior policies and standards are being deliberately changed, not casually ignored, and if an agency glosses over or swerves from prior precedents without discussion it may cross the line from the tolerably terse to the intolerably mute," citing *Greater Boston Tel. Corp. v. FCC*, 444 F.2d 841, 852 (D.C. Cir.), *cert. denied*, 403 U.S. 923 (1971)); see also *Detsel v. Sullivan*, 895 F.2d 58, 64-65 (secretary "failed to produce any evidence indicating the rationale for his interpretation").

recover its costs, however, has nothing to do with the issue under Section 20.18(j) of which costs are “the PSAP’s” in the first place and, as numerous carriers discussed in their comments, holding PSAPs responsible for such costs is consistent with the fact that the PSAPs are the ultimate cost causers.³⁶

The Bureau cites the *Second MO&O* as a basis for taking into account the “PSAP’s existing E911 system” in interpreting Section 20.18(d).³⁷ In that very decision, however, the Commission notes that LECs provision the trunking connections in the E911 Wireline Network in accordance with PSAP needs and at the PSAP’s expense.³⁸ The Report that served as the basis of the *Second MO&O* explained that:

[LECs] own and operate (and usually lease-back through a service contract) most of the 9-1-1 access tandems (more appropriately referred to as a “selective router”), ALI databases, *the trunks used to carry 9-1-1 calls* and (sometimes) the CPE and the PSAP dispatch locations throughout the country. The price the PSAP pays for the LEC services are typically determined through a “special tariff” which is subject to review at the state level. *The service(s) provided by the LEC to the PSAP are contractual in nature and are subject to the parameters outlined by the PSAP in its request for service, including technical, operating and financial parameters.*³⁹

Thus, under established precedents and guidelines, the E911 Wireline Network includes LEC-provisioned facilities between the MSC/end office and the selective router for which the PSAP

³⁶ Petitioners are aware of arguments that somehow the wireless consumer is the “cost causer” for purposes of LEC-provisioned facilities and third party database services. By the terms of the Commission’s rules, however, it is the PSAP — not the customer — with authority to trigger a carrier’s E911 obligations. E911 is, fundamentally, a service provided to government agencies which, in turn, provide emergency services for their taxpayers, and facilities in the E911 Wireline Network are provisioned for a public purpose — not a commercial one.

³⁷ Letter at 3 n.9.

³⁸ *Revision of the Commission’s Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, Second Memorandum Opinion and Order*, 14 FCC Rcd. 20850, 20886-87, ¶¶ 92, 94 (1999).

³⁹ See Report of CTIA, APCO, NENA, and NASNA, CC Docket No. 94-102, filed August 9, 1999, at 15 (emphasis added).

— not the wireless carrier — is responsible; indeed, King County itself acknowledges this fact.⁴⁰ To effect a change in this established policy, the *full Commission* must do so via a notice and comment rulemaking proceeding.

In fact, the Bureau failed to address the very rule at issue in the King County Letter — *i.e.*, what a PSAP must do under Section 20.18(j) to become “*capable of receiving and utilizing the data elements associated with the service*” and what constitutes “the *Public Safety Answering Point's costs* of the enhanced 911 service.”⁴¹ To the extent that the Bureau has authority to resolve this issue, it must rely solely on existing law and precedent which, as demonstrated in various comments, would establish a “demarcation point” at the wireless carrier’s switch.

As the Bureau acknowledges, Phase I information consists of twenty digits of information: ten digits representing the calling number’s ANI and ten digits representing the pseudo-ANI location information. If a PSAP cannot receive and utilize these twenty digits of information because of incompatibility of the technology used in the existing E911 Wireline Network, the rules do not oblige the wireless carrier to provide different data or different routing at its own expense. Any investments needed to make the PSAP capable of receiving and utilizing the required twenty digits of information is the PSAP’s responsibility, under the Commission’s rules and precedents. The Bureau does not have authority to countermand this established policy.

Moreover, by effectively granting the PSAP full authority to determine the technology used for implementing wireless E911, while placing on a wireless carrier the responsibility for

⁴⁰ “Traditionally, network and data base services have been considered to be elements of the E911 service that is ordered by PSAPs from telecommunications companies.” King County Letter at 1.

⁴¹ See 47 C.F.R. § 20.18(j) (emphasis added). The Bureau gives this prerequisite, at most, a passing reference. See Letter at 3.

the cost of everything on “its” side of the selective router, the Bureau gives PSAPs a strange incentive to select a particular solution based solely on how costs may be avoided and no incentive to minimize the costs carriers and their customers would have to bear. This is made particularly clear in comparing carriers’ responsibilities in an HCAS and NCAS environment versus a CAS environment.⁴²

This is also completely inconsistent with the Commission’s determination that the wireless carrier is only responsible for providing the Phase I information, and that network, hardware, and software upgrades needed for the PSAP to use that information are the PSAP’s responsibility.⁴³ In its original decision adopting the PSAP prerequisites, the Commission expressly found that 911 facilities upgrades were the PSAP’s responsibility:⁴⁴

the requirements imposed upon covered carriers by our actions in establishing the schedule shall apply only if a carrier receives a request for E911 service from the administrator of a PSAP *that has made the investment which is necessary to allow it to receive and utilize the data elements associated with the service . . .*⁴⁵

In describing the type of anticipated “investment” required of PSAPs, the Commission explained further:

The PSAPs must use switches, protocols, and signalling systems that will allow them to obtain the calling party’s number from the transmission of ANI. Older analog systems may not have this capability.⁴⁶

⁴² See Bureau Letter at 5.

⁴³ *Revision of the Commission’s Rules To Ensure Compatibility with Enhanced 911 Emergency Calling Systems, Report and Order and Further Notice of Proposed Rulemaking*, 11 FCC Rcd. 18676, 18681 (1996); *Revision of the Commission’s Rules To Ensure Compatibility with Enhanced 911 Emergency Calling Systems, Notice of Proposed Rulemaking*, 9 FCC Rcd. 6170, 6178 nn. 48-49 and 6179 n.53. (1994).

⁴⁴ See 47 C.F.R. § 20.18(f) (1999), recodified at 47 C.F.R. § 20.18(j) (2000).

⁴⁵ *Report and Order*, 11 FCC Rcd. at 18709 (emphasis added).

⁴⁶ *Id.* at 18709 note 119.

In retaining the PSAP capability and cost recovery prerequisites in the *Second MO&O*, the Commission affirmed PSAPs' ongoing responsibilities, recognizing that PSAPs must "be able to finance expenditures required to upgrade their hardware or software capabilities to receive and use Phase I and Phase II information, as well as to finance recurring costs that may be associated with the additional services."⁴⁷ The Commission's cited basis for this policy judgment was record information clarifying that "the bulk of [the] selective routers . . . [.] ALI databases, and 9-1-1 trunks, as well as the PSAPs' own equipment, will have to be upgraded *at the PSAPs' own expense* to handle the additional ANI and ALI information that will be provided by wireless carriers."⁴⁸ The Commission has thus addressed what constitutes a "PSAP's costs" under Section 20.18(j), and the Bureau may not effectively repudiate this earlier interpretation.⁴⁹

NCAS and other solutions were developed to make the PSAPs' E911 Wireline Network capable of obtaining Phase I information without upgrading existing facilities at the selective router. By the terms of the Commission's underlying orders, the costs of these solutions — that will enable the PSAPs' "existing E911 network and ALI data base"⁵⁰ to obtain ANI and ALI from the carriers — are among the "PSAP's costs" under Section 20.18(j). As the Bureau itself explains, "[t]hese techniques involve enhancements and/or 'add-ons' *to the existing 911 Wireline*

⁴⁷ *Second MO&O*, 14 FCC Rcd. at 20877 ¶ 66.

⁴⁸ *See id.*, citing CTIA Comments in CC Docket No. 94-102, filed September 14, 1999, at 2 (emphasis added).

⁴⁹ *See National Family Planning v. Sullivan*, 979 F.2d 227, 231 (D.C. Cir. 1992); *see also Southwestern Bell v. FCC*, 28 F.3d 165, 169 (D.C. Cir. 1994) (Commission "bound to follow those statements until such time as it altered them through another rulemaking").

⁵⁰ *See King County Letter* at 2.

Network.”⁵¹ In short, NCAS, CAS and HCAS are the very “facility and equipment upgrades” and systems that provide PSAPs with the capability to receive and utilize Phase I information.”⁵²

The Bureau nevertheless determined “that these costs properly repose with the wireless carrier rather than with the PSAP,” reasoning that such costs “are directly attributable to the unique nature of the service provided, *i.e.*, the mobility of the wireless caller, which generates costs associated with identifying the caller’s phone number and location.”⁵³ This cannot be squared with established Commission rules and policies. If wireless carriers could provide E911 information without the PSAP first upgrading the E911 Wireline Network, Section 20.18(j) would have been unnecessary. The Bureau’s adoption of King County’s interpretation of the rules renders Section 20.18(j) and the *Second MO&O* superfluous by holding, in essence, that the existing E911 Wireline Network *is* Phase I-capable.⁵⁴ As the Commission has determined, however, Phase I capability in the E911 network can be accomplished solely by the PSAPs’ proactive efforts, not regulatory fiat.

Finally, the Bureau’s decision unlawfully discriminates against wireless carriers by placing on them the responsibility for the cost of transporting E911 Phase I information from their switches to the 911 selective router, while the incumbent wireline carrier’s transport of 911 calls between its switches and the 911 selective router is paid for by the PSAP. The Commission expressly intended that wireless carriers’ E911 capabilities would be commensurate with those of

⁵¹ Letter at 4 (emphasis added).

⁵² See *E911 Report and Order*, 11 FCC Rcd. at 18681, 18709 n.119.

⁵³ Letter at 6.

⁵⁴ Cf. *Electronic Engineering Co. v. FCC*, 140 F.3d 1045, 1050 (D.C. Cir. 1998) (“Commission’s reading gave content to these open-ended provisions without compromising any other requirements in the rules”).

wireline carriers,⁵⁵ and the Commission provided no indication that a PSAP's ongoing responsibilities with respect to 911 service provision would be anything other than a carry-over from the landline environment.⁵⁶ The Bureau is obliged under existing law and precedent to treat trunks between wireless carriers' switches and the selective router in the same way as the trunks between wireline carriers' switches and the selective router, unless there is a reasoned basis for treating wireless carriers differently from wireline carriers. There is no such justification on the record here, and any determination otherwise can be effected only by the full Commission in a notice and comment rulemaking.

⁵⁵ *Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, 9 FCC Rcd 6170, ¶ 37 (1994) ("propos[ing] to require that mobile radio transmitters supplied to wireless customers provide the same level of access to 911 emergency services as is available to wireline customers.").

⁵⁶ *See Second MO&O* at ¶ 5 ("State and local authorities have to provide their local public safety officials with the means needed to request and use wireless E911 location information. Otherwise, PSAPs will be unable to dispatch emergency services to wireless 911 callers in life-threatening situations as quickly as possible.").

CONCLUSION

For the foregoing reasons, the Bureau should reconsider its determination that the appropriate demarcation point for allocating carriers' and PSAPs' E911 Phase I costs is the selective router. The Bureau is without authority to make such a novel policy determination and, at most, may only affirm that the MSC is the appropriate demarcation point.

Respectfully submitted,

VERIZON WIRELESS




John T. Scott, III
Vice President and Deputy General
Counsel — Regulatory Law
1300 I Street, N.W. Suite 400W
Washington, DC 20005
(202) 589-3760

VOICESTREAM WIRELESS CORPORATION



Brian T. O'Connor
Robert A. Calaff
VoiceStream Wireless Corporation
401 9th Stream, NW, Suite 550
Washington, DC 20554
(202) 654-5900

QWEST WIRELESS, LLC



Sharon J. Devine
Kathryn Marie Krause
1020 19th Street, NW Suite 700
Washington, DC 20036-6101
(303) 672-2859

NEXTEL COMMUNICATIONS, INC.



Robert S. Foosaner
Lawrence R. Krevor
Laura L. Holloway
2001 Edmund Halley Drive
Reston, VA 20191
(703) 433-4000

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